# Perbadanan Pengurusan Anjung Hijau v Pesuruhjaya Bangunan Dewan Bandaraya Kuala Lumpur

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-24NCVC-1794–11 OF 2016
NANTHA BALAN J
24 MAY 2017

*Companies and Corporations — Meeting — Annual general meeting — Plaintiff requested for adjournment of holding of annual general meeting — Whether court had power under s 1(7) of the Strata Management Act 2013 ('the Act') read together with para 8 of the Schedule of the Courts of Judicature Act 1964, to extend time and postpone holding of management corporation's annual general meeting which by virtue of para 10(2) of the Second Schedule of the Act, must be held by specific date — Courts of Judicature Act 1964 — Strata Management Act 2013 s 1(7)*

The plaintiff was the management corporation for an apartment known as 'Anjung Hijau Apartment'. The rival faction of the owners of units of the apartment had filed several suits against the plaintiff. On this basis, the plaintiff sent a letter to the defendant and requested for an adjournment of the holding of the annual general meeting ('AGM'). The defendant in their reply on 5 October 2016 stated that they had no power under the relevant legislation to grant adjournment. Nevertheless, by the time of the reply by the defendant, the last date to hold the AGM, that was on 8 August 2016 had already gone past. Consequently, the plaintiff filed originating summons ('the OS') seeking declaration for the postponement of the AGM. In response, the defendant filed an application to strike out the said OS. The issue in dispute was whether the court had power under s 1(7) of the Strata Management Act 2013 ('the Act') read together with para 8 of the Schedule of the Courts of Judicature Act 1964 ('the CJA'), to extend time and postpone the holding of a management corporation's AGM which by virtue of para 10(2) of the Second Schedule of the Act, must be held by a specific date.

**Held**, allowing the plaintiff's application with costs of RM5,000 subject to 4% allocator and dismissing the defendant's application with no order as to costs:

(1) In the present case, it could not be said that para 10(2) of the Second Schedule of the Act was not mandatory. Even if a statutory provision is mandatory, the court may still be able to extend time under para 8 of the Schedule of the CJA, but this will depend on whether such extension will be contrary to the relevant statute under consideration and will finally

depend also on whether a non-extension may result in an injustice. In the instant case, the defendant, as the lawful delegate of the state authority pursuant to s 4(1) of the Act, had the requisite power under s 1(7) of the Act to suspend the Act or any part of it vis a vis any area or part of an area. Therefore, the stand taken in the defendant's letter dated 5 October 2016 that they had no power to adjourn the AGM was plainly wrong (see paras 17, 23 & 26).

(2) Section 151(1) of the Act was not applicable as it dealt with exemption whereas in the present case the plaintiff was not seeking an exemption but rather a suspension of that part of the Act as related to the holding of the AGM. The power of suspension was covered by s 1(7) of the Act and there was therefore adequate power for the defendant to suspend the provisions of the Act relating to the holding of the AGM (see para 25).

**[Bahasa Malaysia summary**

Plaintif adalah perbadanan pengurusan untuk apartmen yang dikenali sebagai 'Anjung Hijau Apartment'. Kumpulan saingan pemilik-pemilik unit-unit apartmen itu telah memfailkan beberapa guaman terhadap plaintif. Atas dasar ini, plaintif telah menghantar surat kepada defendan dan memohon penangguhan untuk mengadakan mesyuarat agung tahunan ('MAT'). Defendan dalam jawapan mereka pada 5 Oktober 2016 menyatakan bahawa mereka tiada kuasa di bawah perundangan berkaitan untuk memberikan penangguhan. Walau apa pun, pada masa mendapat jawapan oleh defendan itu, tarikh akhir untuk mengadakan MAT, iaitu pada 8 Ogos 2016 telahpun berlalu. Berikutan itu, plaintif telah memfailkan saman pemula ('SP') memohon deklarasi untuk penangguhan MAT. Sebagai jawapan, defendan telah memfailkan permohonan untuk membatalkan SP tersebut. Isu yang dipertikaikan adalah sama ada mahkamah mempunyai kuasa di bawah s 1(7) Akta Pengurusan Strata 2013 ('Akta') dibaca bersama perenggan 8 Akta Mahkamah Kehakiman 1964 ('AMK'), untuk melanjutkan masa dan menangguhkan untuk mengadakan MAT perbadanan pengurusan yang mana menurut perenggan 10(2) Jadual Kedua Akta tersebut, perlu diadakan pada tarikh yang khusus.

**Diputuskan**, membenarkan permohonan plaintif dengan kos RM5,000 tertakluk kepada 4% alokator dan menolak permohonan defendan tanpa perintah untuk kos:

(1) Dalam kes ini, ia tidak boleh dikatakan bahawa perenggan 10(2) Jadual Kedua Akta tersebut bukanlah mandatori. Walaupun peruntukan statutori adalah mandatori, mahkamah masih boleh melanjutkan masa di bawah perenggan 8 Jadual AMK, tetapi ini bergantung kepada sama ada lanjutan tersebut bertentangan dengan statut berkaitan di bawah balasan dan akhirnya bergantung juga kepada sama ada dengan tiada lanjuta itu mungkin akan mengakibatkan ketidakadilan. Dalam kes ini,

defendan, sebagai perwakilan yang sah pihak berkuasa negeri menurut s 4(1) Akta tersebut, mempunyai kuasa yang dikehendaki di bawah s 1(7) Akta tersebut untuk menggantungkan Akta tersebut atau mana-mana bahagiannya atau mana-mana atau sebahagian daripada bahagian itu. Oleh itu, pendirian yang diambil dalam surat defendan bertarikh 5 Oktober 2016 bahawa mereka tidak mempunyai kuasa untuk menangguhkan MAT itu jelas salah (lihat perenggan 17, 23 & 26).

(2) Seksyen 151(1) Akta tersebut tidak terpakai kerana ia adalah berkenaan pengecualian manakala dalam kes ini plaintif bukan memohon pengecualian tetapi suatu penggantungan bahagian Akta tersebut yang berkaitan kepada MAT diadakan. Kuasa penggantungan dinyatakan dalam s 1(7) Akta tersebut dan oleh itu terdapat kuasa yang mencukupi untuk defendan menggantung peruntukan-peruntukan Akta tersebut yang berkaitan dengan mengadakan MAT (lihat perenggan 25).]

**Notes**

For a case on annual general meeting, see 3(1) *Mallal's Digest* (5th Ed, 2017 Reissue) para 569.

**Cases referred to**

*Amin bin Halim Rasip & Anor v Tenaga Nasional Bhd and other cases* [2016] 10 MLJ 133, HC (refd)

*Datuk Bandar Kuala Lumpur v Kuala Lumpur Gold & Country Club Bhd* [2007] 3 MLJ 293, FC (folld)

*Hotel Ambassador (M) Sdn Bhd v Seapower (M) Sdn Bhd* [1991] 1 MLJ 404; [1991] 1 CLJ (Rep) 174, SC (refd)

*Majlis Peguam & Anor v Tan Sri Dato' Mohamed Yusoff bin Mohamed* [1997] 2 MLJ 271, SC (refd)

**Legislation referred to**

Capital Market and Services Act 2007 ss 221, 224(1)
Courts of Judicature Act 1964 s 25(2), Schedule, para 8
Legal Profession Act 1976 s 15(2), (5)
Local Government Act 1976 s 145, 145(1)
Strata Management Act 2013 ss 1(7), 1(8), 4(1), 34(2), 151(1), Second Schedule, para 10(2), 10(3)

*Mahendran Chelliah @ Mahendran Ponniah (RR Chelliah Brothers) for the plaintiff.*
*Zainol Aziz bin Mohamad (Zainol, Kiong & Assoc) for the defendant.*

**Nathan Balan J:**

INTRODUCTION

**[1]** The issue that arises in this case is whether the court has power under s 1(7) of the Strata Management Act 2013 ('the Act') read together with para 8 of the Schedule of the Courts of Judicature Act 1964, to extend time and postpone the holding of a management corporation's annual general meeting ('AGM') which by virtue of para 10(2) of the Second Schedule of the Act, must be held by a specific date.

THE PROBLEM

**[2]** The plaintiff is the management corporation for an apartment building known as 'Anjung Hijau Apartment' and its members were elected in an annual general meeting ('AGM') on 9 May 2015. During their tenure of office, numerous suits had been filed against them by a rival faction of the owners of units of the apartment and these legal proceedings are currently ongoing. The details of the suits are set out in the plaintiff's affidavit in support and they are not very material and it would suffice to say that the plaintiff is having very real issues with these rival factions. Hence, according to the plaintiff, it is only appropriate that the next AGM which had to be held by 8 August 2016 as per para 10(2) of the Second Schedule of the Act, be postponed until such time that the dust of conflict as evidenced by the spate of litigation, settles. The plaintiff was of the view that the defendant has extensive powers under the Act to oversee the running of management corporation for apartments. In view of the fact that the last day to hold the next AGM was on 8 August 2016, the plaintiff sent a letter dated 29 June 2016 to the defendant and requested for an adjournment of the holding of AGM. The plaintiff's letter reads as follows:

> Date: 29 June 2016
>
> BY HAND
>
> DEWAN BANDARAYA KUALA LUMPUR (DBKL)
>
> Bahagian Pesuruhjaya Bangunan (COB)
>
> Jabatan Penilaian Dan Pengurusan Harta
>
> Tingkat 17, Bangunan TH Perdana
>
> 1001 Jalan Sultan Ismail
>
> 50250 Kuala Lumpur (Tel:03–26171000 Fax: 03–26937119)
>
> (Attention: Mr S Ravennesan Kamarulzaman bin Mat Salleh)
>
> Dear Mr S Ravennesan. Kamarulzaman,
>
> RE: 1. KUALA LUMPUR HIGH COURT SUIT NO WA-37G-26–05/2016(S-22NCVC-242–2010)
>
> 2. KUALA LUMPUR HIGH COURT SUIT NO WA-22NCVC-318–05/2016

3. KUALA LUMPUR SESSIONS COURT SUIT NO WA-53F-15–05/2016 **A**

4. KUALA LUMPUR SESSIONS COURT SUIT NO B53F-2–02/2015

5. REQUEST FOR POSTPONEMENT OF 2016 AGM OF PPAH

1. We refer to the above matter and wish to seek your approval to postpone the Annual General Meeting (AGM) of Perbadanan Pengurusan Anjung Hijau (PPAH) for year 2016 which is supposedly to be held *latest by 8.8.2016* for the following reasons: **B**

i. Members of the management council have been sued by owners in respect of matters pertaining to the management of Anjung Hijau and for the cases are pending in court; **C**

ii. Members of the management council will be required to attend and give evidence at the trial;

iii. It is vital for the members to have access to the management books and documents for the preparation of the court cases; **D**

iv. Members of the present management council have personal knowledge of the facts of the pending cases in court some of which date back to 2011;

v. In particular there is a pending suit against Lai King Lung for the sum or *RM650,000.00* in respect of a matter that took place in 2011; and **E**

vi. The above court actions involve *PPAH against owners* of Anjung Hijau.

2. In the event elections are held, owners who have cases against PPAH will stand for elections and strive to become council members. It would have a devastating effect on the pending cases in court and jeopardises PPAH's chances of success. The financial implications would be disastrous to PPAH. **F**

3. It is therefore imperative that the AGM be postponed to enable the present council members to attend to the cases and act in the interest of PPAH against these owners who have taken PPAH to court until the disposal of the above suits which is estimated to be resolved before the next AGM in August 2017. **G**

4. The above 4 suits are in respect of incidents happened as far back on 29.12.2010, 11.4.2013 and 21.5.2013 which are all within the knowledge of COB.

...

9. The postponement is necessary for the current management councils who have full knowledge of all the facts of the above 4 suits to dispose of all the above 4 suits with the minimum cost impact to PPAH as far as possible and in the best interest of Anjung Hijau owners. **H**

...

17. We appeal to your kind consideration in giving us your approval to postpone the AGM to allow the current management councils, who are mere volunteers, to run the PPAH until the above court cases are over estimated to be resolved before the next AGM in August 2017 FOR THE BENEFIT OF ANJUNG HIJAU OWNERS. **I**

**[3]** There was no reply from the defendant. Hence, on 1 August 2016, the plaintiff handed to the defendant another letter dated the same day and expressly stating that if there was no reply from the defendant within seven days, it would be assumed that the defendant had granted the request for an adjournment. Again, there was no reply from the defendant.

**[4]** On 5 October 2016, the defendant finally wrote to the plaintiff apologising for the delay and stating that they had no power under the relevant legislation to grant an adjournment but effectively acknowledged that the discretion to postpone the AGM can be exercised if there is a court order and suggesting that the plaintiff should obtain a court order. By this time, the last date to hold the AGM, that is, 8 August 2016 had already gone past. The defendant's much awaited and belated letter dated 5 October 2016 reads as:

> Rujukan Kami: (36) DBKL/JPPH/COB/258
>
> Tarikh: 05 Oktober 2016
>
> Perbadanan Pengurusan Anjung Hijau
>
> A–0–6, No 8, Jalan Jalil Perkasa 1 (1/155B),
>
> Bukit Jalil,
>
> 57000 Kuala Lumpur
>
> (u/p: Puan Chin Yuet Sin)
>
> Puan,
>
> PER: REQUEST FOR POSTPONEMENT OF AGM OF PERBADANAN PENGURUSAN ANJUNG HIJAU
>
> Dengan segala hormatnya saya diarah merujuk kepada perkara di atas dan surat pihak Puan bertarikh 29 Jun 2016 juga adalah berkaitan.
>
> 2. Terlebih dahulu, pihak Pesuruhjaya Bangunan Kuala Lumpur (COB) ingin memohon maaf di atas kelewatan untuk mengemukakan maklumbalas ini kepada pihak puan. Untuk makluman, pihak COB telah meneliti persoalan yang dikemukakan oleh pihak puan berkenaan dengan penangguhan Mesyuarat Agung Tahunan bagi kawasan Perbadanan Pengurusan Anjung Hijau. Untuk makluman puan, berdasarkan kepada peruntukan Jadual Kedua, Perenggan 10(2), Akta Pengurusan Strata 2013 (Akta 757) menjelaskan bahawa, '... mesyuarat agung tahunan yang berikutnya hendaklah diadakan *sekali dalam setiap tahun*, dengan syarat bahawa *tidak lebih daripada lima belas bulan boleh terlupus antara tarikh satu mesyuarat agung tahunan tersebut dengan mesyuarat agung tahunan yang berikutnya* ...'.
>
> Kegagalan mesyuarat agung tahunan tersebut diadakan dalam tempoh masa yang dibenarkan boleh menyebabkan tindakan pendakwaan diambil ke atas MC dan anggota jawatankuasa iaitu boleh *didenda tidak melebihi lima puluh ribu ringgit atau penjara tidak melebihi tempoh tiga tahun atau kedua-duanya sekali* sepertimana yang diperuntukkan di bawah Peraturan-peraturan Pengurusan Strata (Penyenggaraan dan Pengurusan) 2015.
>
> 3. Seterusnya, pihak COB *tidak diperuntukkan sebarang kuasa di dalam Akta 757*

*yang boleh memberikan kebenaran kepada mana-mana pihak bagi maksud menangguhkan mesyuarat agung tahunan (AGM)* tersebut. Justeru, *peruntukan akta di atas adalah terpakai sehingga terdapatnya suatu perintah mahkamah yang membenarkan sebaliknya*.

4. Dikemukakan perkara tersebut di atas untuk makluman pihak puan.

Sekian. Terima kasih.

(Emphasis added.)

**[5]** The plaintiff's present application by way of the originating summons seeks the following orders:

(a) Satu deklarasi bahawa mesyuarat agung tahunan ('AGM') yang ditetapkan untuk berlangsung pada 1.8.2016 ditangguhkan untuk satu tarikh berikutan dengan pelupusan guaman-guaman sivil yang belum selesai di Mahkamah masing-masing seperti berikut:

(i) Mahkamah Tinggi Kuala Lumpur Guaman Sivil No WA-22NCVC-318–05/2016 antara Perbadanan Pengurusan Anjung Hijau v Lai King Kung & 3 yang lain;

(ii) Mahkamah Tinggi Kuala Lumpur Guaman Sivil No WA-37G-26–05/2016 antara Lai King Lung v Perbadanan Pengurusan Anjung Hijau & Satu lagi;

(iii) Mahkamah Sesyen Kuala Lumpur Guaman Sivil No WA-B53F-15–5/2016 antara Bok Yoke Wan v Perbadanan Pengurusan Anjung Hijau;

(iv) Mahkamah Tinggi Kuala Lumpur Guaman Sivil No WA-24NCVC-1459–09/2016 antara Perbadanan Pengurusan Anjung Hijau v Bok Yoke Wan;

(v) Mahkamah Sesyen Kuala Lumpur Guaman Sivil No WA-B52NCVC-88–03/2016 antara Perbadanan Pengurusan Anjung Hijau v Foo Yau Lim & 2 lagi ('Guaman-guaman tersebut');

(b) Satu deklarasi bahawa pihak yang dilantik sebagai pemegang jawatan (*office bearer*) Plaintif dalam mesyuarat yang berlangsung pada 9.5.2015 diberi sanksi untuk terus menguruskan Plaintif sehingga pelupusan Guaman-guaman Plaintif tersebut;

(c) Satu deklarasi bahawa semua keputusan yang dibuat oleh ahli jawatankuasa Plaintif yang sedia ada adalah sah dan mengikat pada Plaintif;

(d) Relif-relif atau perintah lain yang difikirkan adil dan saksama oleh Mahkamah yang Mulia ini.

A THE STRATA MANAGEMENT ACT 2013

**[6]** I turn now to the relevant statutory provisions under the Act and they are:

B Strata Management Act 2013

Section 1

(7) The State Authority may, if in its opinion it would not be contrary to the public interest and the interest of the purchasers to do so, suspend the operation of this Act *or any provision of this Act* in any local authority area or any part of any local C authority area *or any other area for such period as it deems fit*. (Emphasis added.)

(8) In this Act, references to the State Authority in relation to the Federal Territory of Kuala Lumpur, the Federal Territory of Labuan and the Federal Territory of Putrajaya shall be construed as references to the Minister responsible for the Federal Territory of Kuala Lumpur, the Federal Territory of Labuan and the Federal D Territory of Putrajaya.

Section 2

'Commissioner' means the Commissioner of Buildings appointed under subsection 4(1), and includes any Deputy Commissioner and other officers appointed under subsection 4(1) to exercise the powers or perform the duties E imposed on the Commissioner;

Section 4

(1) *The State Authority may, in respect of a local authority area or any other area, appoint an officer to be known as the Commissioner of Buildings* and such number of Deputy Commissioners of Buildings and other officers as may be necessary for the F purpose of administering and carrying out the provisions of this Act.

(2) The appointment of the Commissioner of Buildings, any Deputy Commissioner of Buildings and other officer under subsection (1) shall be made by notification in the *Gazette*.

G (3) Subject to any general or special direction of the State Authority which is not inconsistent with the provisions of this Act, *the Commissioner shall have charge of the administration of this Act and may perform such duties as are imposed and may exercise such powers as are conferred upon him by this Act or any other written law*.

(4) Subject to any general or special direction of the Commissioner which is not H inconsistent with the provisions of this Act, any powers conferred on and duties to be performed by the Commissioner under this Act or any other written law may be exercised or performed by any Deputy Commissioner or other officer appointed under subsection (1).

Section 34

I Annual General Meeting.

(1) A joint management body, management corporation or subsidiary management corporation, as the case may be, shall hold its annual general meetings in accordance with subparagraph 10(2) of the Second Schedule to the Act.

(2) If any joint management body, management corporation or subsidiary

management corporation *fails to hold any annual general meeting*, the joint management body, the management corporation or the subsidiary management corporation, as the case may be, *commits an offence* and shall on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both. (Emphasis added.)

Second Schedule

10 Annual general meeting.

(1) The management corporation shall hold an annual general meeting for the consideration of accounts, election of the management committee and the transaction of such other matters as may arise.

(2) The first annual general meeting shall be held within one month after the expiry of the initial period and the *subsequent annual general meetings shall be held once in each year, provided that not more than fifteen months shall lapse between the date of one annual general meeting and the next*.

(3) The *holding of any annual general meeting out of time in breach of this paragraph shall not affect the validity of the annual general meeting*. (Emphasis added.)

THE ARGUMENT

**[7]** According to the plaintiff, the defendant has the requisite power to postpone the AGM. In this regard, the plaintiff contends that there is power under s 1(7) of the Act for the AGM to be postponed. Further, counsel for the plaintiff argues that para 10(3) of the Second Schedule of the Act which legitimises any AGM which is held after the statutory time limit, indirectly indicates that there can be a postponement of the AGM.

**[8]** It was contended for the plaintiff that this could be done either by the defendant pursuant to its powers under the Act and/or by this court pursuant to its general power under para 8 of the Schedule of the Courts of Judicature Act 1964.

ANALYSIS

**[9]** It is axiomatic that under the Act, the plaintiff must hold their AGM in accordance with para 10(2) of the Second Schedule of the Act and a failure to do so constitutes an offence under s 34(2) of the Act. The question is whether para 10(3) of the Second Schedule which preserves the validity of any meeting held outside of the time limit which is stipulated in para 10(2) of the Second Schedule can be read as enabling the defendant to extend time. Alternatively, whether the court is empowered to extend time so that a meeting may be postponed until much later and thereby making such a meeting to be one which is in accordance with the Act and therefore no longer an offence under s 34(2) of the Act. Clearly, the Act does not within the confines of para 10(2)

of the Second Schedule of the Act or within the purview of the Act, expressly provide for any extension of time.

**[10]** The starting point is that the clear words of para 10(2) of the Second Schedule and s 34(2) of the Act lead to the inevitable conclusion that the provisions are mandatory and prima facie appears to be incapable of being extended either by the defendant pursuant to its powers under the Act or by the court under para 8 of the Schedule of the Courts of Judicature Act 1964.

**[11]** The plaintiff harped on the fact that in the defendant's letter dated 5 October 2016, in response to the plaintiff's letter dated 29 June 2016, the defendant had stated that they have no power to extend time and advised the plaintiff to obtain a court order extending time. The other complaint made by the plaintiff is that the plaintiff's letter dated 26 June 2016 was well in advance of the last date by which the AGM should be held, that is, by 8 August 2016. Hence, if the defendant had promptly replied, then it is possible that, despite the intractable internal feud and ongoing litigation problems, the plaintiff 'may' have been able to go ahead and hold the AGM on or before 8 August 2016. Here, they did not do so as they expected a favorable response from the defendant. Hence, the plaintiff argues that the defendant is estopped from at least opposing the present application. In my view, estoppel does not operate in the realm of statutory provisions or powers. See *Hotel Ambassador (M) Sdn Bhd v Seapower (M) Sdn Bhd* [1991] 1 MLJ 404 at p 407; [1991] 1 CLJ Rep 174 at p 179 (SC) (per Hashim Yeop Sani CJ Malaya) — 'There can be no estoppels as against statutory provisions'.

**[12]** I turn now to consider whether the court has power under s 25(2) of the Courts of Judicature Act 1964 read with para 8 of the Schedule of the Courts of Judicature Act 1964. Section 25(2) of the Courts of Judicature Act 1964 reads as:

> 25 Powers of the High Court
>
> ...
>
> (2) Without prejudice to the generality of subsection (1) the High Court shall have the additional powers set out in the Schedule:
>
> Provided that all such powers shall be exercised in accordance with any written law or rules of court relating to the same.

**[13]** I refer now to para 8 of the Schedule of the Courts of Judicature Act 1964 which reads as follows:

> 8 Time
>
> Power to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, although any application therefore be not made until after the expiration of the time prescribed.

Provided that this provision shall be without prejudice to any written law relating to limitation.

**[14]** These provisions were considered by the then Supreme Court in *Majlis Peguam & Anor v Tan Sri Dato' Mohamed Yusoff bin Mohamed* [1997] 2 MLJ 271 (SC). The issue in that case was whether the court could abridge time for purposes of s 15(5) of the Legal Profession Act 1976 for posting of notices of the petition for admission as an advocate and solicitor. In that case, the Supreme Court ruled that there was no power to abridge time as the statutory provision was 'mandatory' in nature.

**[15]** Edgar Joseph Jr FCJ (speaking for the Supreme Court), said that the statutory provision (s 15(2) of the Legal Profession Act 1976) was mandatory and thus prohibits the court from abridging the time limit therein by resorting to its general power under para 8 of the Schedule of the Courts of Judicature Act 1964. He said, to hold otherwise would be in direct contradiction of s 25(2) of the Courts of Judicature Act 1964 and was therefore not in accordance with the written law (see paras 298C–D of the judgment). In the present case, para 10(2) of the Second Schedule is obviously a mandatory provision as any non-compliance gives rise to a criminal offence under s 34(2) of the Act. Hence, following the principle that was enunciated in the *Majlis Peguam & Anor v Tan Sri Dato' Mohamed Yusoff bin Mohamed* [1997] 2 MLJ 271 (SC), I was initially compelled to the view that this court has no power to postpone the deadline for holding of the AGM as required under para 10(2) of the Second Schedule.

**[16]** The counsel for the plaintiff relied on the case of *Amin bin Halim Rasip & Anor v Tenaga Nasional Bhd and other cases* [2016] 10 MLJ 133 (HC) where the High Court had to consider whether it had power to extend time stipulated under s 224(1) of the Capital Market and Services Act 2007 ('the CMSA').

**[17]** In that case, dissenting shareholders were required under s 224(1) of the CMSA to file their originating summons within one month from the date of the defendant's s 221 CMSA notice. The learned judicial commissioner held that s 224(1) of the CMSA was not mandatory and that he had power under para 8 of the Schedule of the Courts of Judicature Act 1964 to extend time. The outcome was that the court declined to extend time, holding that the dissenting shareholders were not bona fide. I note that the case of *Majlis Peguam & Anor v Tan Sri Dato' Mohamed Yusoff bin Mohamed* [1997] 2 MLJ 271 (SC) was not referred to in that case and in any event, the court held that the statutory provision in that case was not mandatory. In the present case it cannot be said that para 10(2) of the Second Schedule of the Act is not mandatory. But I do think that the mere fact that a statutory provision is mandatory does not mean that the timeline stated therein is not capable of

extension under para 8 of the Schedule of the Courts of Judicature Act 1964. It all depends.

**[18]** If there are other provisions within the statute which indicate that time may be extended, then depending on the particular factual circumstances of the case and depending also on whether an injustice would be occasioned if extension of time is not granted, the power may be exercised accordingly under para 8 of the Schedule of the Courts of Judicature Act 1964.

**[19]** In the present case, there was no counter argument by the defendant that the reasons put forward by the plaintiff for a postponement of the AGM are lacking in merit or are unworthy of consideration. The sole issue here was whether there was power to extend time under the Act. In this regard guidance may be gained from the later decision of the Federal Court in *Datuk Bandar Kuala Lumpur v Kuala Lumpur Gold & Country Club Bhd* [2007] 3 MLJ 293 (FC). In that case, the ratepayer had lodged an appeal to the High Court against the assessment rates imposed by the local authority. The case synopsis reads as follows. On 31 December 1996, the respondent filed an originating motion under s 145 of the Local Government Act 1976 ('the LGA') to set aside the total annual value of the land of RM5.76m and that the annual value be substituted by the estimated gross annual rent of the land amounting to RM1.3m only. This was an appeal against the decision of the appellant under s 145(1) of the LGA.

**[20]** The appellant raised a preliminary objection that the rating appeal under the LGA was not properly brought because the respondent did not pay the appellant the amount of the rate appealed against 'with the filing of the originating motion', as required by the proviso to s 145(1) of the LGA. On 9 June 1997, the respondent filed the originating motion praying that the time for the payment of the amount of the rate appealed against be extended to 6 February 1997, the day it was paid. The High Court allowed the respondent's application.

**[21]** On 25 October 2004, the Federal Court granted the appellant an extension of time to appeal and leave to appeal on the following questions of law:

(a) whether the time to pay the rates appealed against, which by the proviso to s 145(1) of the LGA is stated to be at the time of filing the motion *could, despite its mandatory nature, be extended by the court*; and

(b) whether the general power of the court to extend time under the Courts of Judicature Act 1964 could apply to a particular statute which imposes express time stipulations and which statute does not itself provide for extension of time.

**[22]** The Federal Court (per Abdul Hamid Mohamad FCJ) discussed the principles that were enunciated by the then Supreme Court in the case of *Majlis Peguam & Anor v Tan Sri Dato' Mohamed Yusoff bin Mohamed* [1997] 2 MLJ 271 (SC) and held at pp 303–304 as follows:

> [26] So, we see that while para 8 confers a general power on the court to extend and abridge time, that power may be taken away by specific provision in a particular statute.
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> [27] Has that power been taken away in the instant appeal? First, there is a complete silence in s 145 about extension of time contrary to s 15 of the Legal Profession Act 1976 where subs 15(3) contains such provision but subs 15(5) does not, followed by s 16(1) which contains that provision again. So, it appears to me that there is a stronger ground for saying that the general power has been taken away in s 15(5) than in s 145.
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> [28] Secondly, unlike the posting of the notice as required by s 15(5) of the LPA 1976 which is addressed to the world at large to enable people to know and to file a caveat if anybody wants to, the proviso to s 145(1) only talks about the time of payment of the rate. The world is not involved. It only concerns the appellant.
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> [29] Thirdly, on the facts of this case, to read the proviso to s 145(1) as mandatory and denying the court the power to extend time under para 8 would lead to grave injustice to the respondent through no fault of theirs. The respondent had not been notified of the new rate at the time they had to file the originating motion as the rate was not yet due from the respondent to the appellant. In short, the condition imposed by the proviso, as at the time of the filing of the originating motion was incapable of performance yet.
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> [30] Under such circumstances, I do not think it can be said that, first, the general power has been removed by the proviso to s 145(1) and secondly, it was not a proper exercise of the discretion on the part of the learned judge that the respondent be allowed to pay on 6 February 1997 instead of 31 December 1996, the day the originating motion was filed.
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> [31] In the circumstances, I would answer the questions posed in the following manner:
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> On Question (a):
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> Whether the time for payment of the rate as provided by s 145(1) can be extended or not depends on whether at the time of filing the originating motion, the amount has been made known to the respondent. If the amount had not been made known to the respondent the condition requiring payment at that point of time is incapable of performance. So, the interest of justice requires that the time may be extended by the court so as not to frustrate the right of appeal of the respondent.
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> On Question (b):
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> [32] Whether the general power of the court to extend time under para 8 of the Schedule of the CJA 1964 is applicable or not to a statute that does not provide the power for the extension of time will depend on the provision of the statute. If from the wording of the statute, the time prescribed for the doing of an act is mandatory and the condition to be fulfilled exists during the period and is capable of performance, the general power to extend time under para 8 of the Schedule of the

A CJA 1964 is not applicable. But, as in this case, where the condition ie, the payment of the rate has not existed because the amount thereof is not yet known to the respondent and is therefore incapable of performance by the respondent, the interest of justice requires that the general power to extend may be ordered by the court.

B [33] In the circumstances of this case, I am of the view that the learned judge was right to make the order for the extension of time for the respondent to pay the rate so as not to frustrate the respondent's right of appeal through no fault of theirs. I would therefore dismiss the appeal with costs and order that the deposit be paid to the respondent towards their taxed costs.

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**[23]** Having regard to the case authorities discussed above, and the factual matrix of the present case, it is my conclusion that based on the principles that were discussed, expanded and enunciated by the Federal Court in *Datuk Bandar Kuala Lumpur v Kuala Lumpur Gold & Country Club Bhd* [2007] 3
D MLJ 293 (FC), even if a statutory provision is mandatory, the court may still be able to extend time under para 8 of the Schedule of the Courts of Judicature Act 1964, but this will depend on whether such extension will be contrary to the relevant statute under consideration and will finally depend also on whether a
E non-extension may result in an injustice. In my view, the defendant, as the lawful delegate of the state authority (or the minister in charge of the Federal Territory of Wilayah Persekutuan as per s 1(8) of the Act) pursuant to s 4(1) of the Act, has the requisite power to suspend the Act or any part of it any area or part of an area. The power is expressly stated or is implicit from s 1(7) of the Act
F which reads as:

(7) The State Authority may, *if in its opinion it would not be contrary to the public interest and the interest of the purchasers to do so, suspend the operation of this Act or any provision of this Act* in any local authority area or any part of any local authority area *or any other area for such period as it deems fit*.

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**[24]** The counsel for the defendant argued that the defendant has no such power and that the proper section in this regard is s 151(1) of the Act where the Minister responsible for local government has the power to exempt any person or building or land, or any class of persons or type of buildings or lands from
H any provisions of the Act. It reads as:

The Minister may, after consultation with the National Council for Local Government, by order published in the *Gazette*, *exempt* any person or building or land, or any class of persons or type of buildings or lands, from all or any of the provisions of this Act, subject to such terms and conditions as may be specified in
I the order.

**[25]** But I am of the view that s 151(1) of the Act is not applicable as it deals with exemption whereas in the present case the plaintiff is not seeking an exemption but rather a suspension of that part of the Act as relates to the

holding of the AGM. In my view, the power of suspension is covered by s 1(7) of the Act and there is therefore adequate power for the defendant to suspend the provisions of the Act relating to the holding of the AGM.

**[26]** Thus, I am impelled to the view that since under s 1(7) of the Act the defendant has the requisite power to suspend the operation of the Act in whole or in part and for any area or duration of time, in the public interest or in the interest of purchasers, the stand taken in the defendant's letter dated 5 October 2016 that they have no power to adjourn the AGM is plainly wrong.

**[27]** As a matter of law, they do have such powers and given the circumstances obtaining the Anjung Hijau Apartment, the defendant ought in my view to have exercised their power to suspend the operation of the Act until such time that litigation matters between the feuding factions are resolved or determined by the courts.

**[28]** Since the defendant is oblivious to their own powers, it now falls upon this court to consider whether to exercise its power to extend time as prayed for by the plaintiffs in the originating summons. The fact that the defendant had asked the plaintiff to make an application to the court for the appropriate order is tacit recognition that there are compelling grounds for an adjournment of the AGM. The other compelling factor here is that the defendant had delayed in their response to the plaintiff and had they responded promptly, the plaintiff may have even proceeded with the AGM before 8 August 2016 and the present originating summons may have been unnecessary. It is therefore unfair for the defendant to now oppose the plaintiff's application. But to be fair to the defendant, they are only opposing the application on the question as to whether there is power under the Act to postpone the AGM.

**[29]** As such, taking all of the surrounding circumstances and in light of my finding that there is power under s 1(7) of the Act for the defendant to suspend the application of the Act to the Anjung Hijau Apartment, it is my ruling that based on s 1(7) of the Act read together with para 8 of the Schedule of the Courts of Judicature Act 1964, the plaintiff's application ('encl 1') should as a matter of fairness and justice, be allowed.

**[30]** For the reasons as stated above, I granted order in terms of encl 1. Prayer (a) is allowed. Prayer (b) is allowed, with the following additional words — 'dan seterusnya, P akan membuat permohonan kepada Defendan untuk menetapkan tarikh untuk mengadakan AGM ...'. Prayer (c) is also allowed. The defendant is to pay costs of RM5,000 (subject to 4% allocatur). Consequently, the application by the defendant ('encl 5') to strike out the originating summons is dismissed with no order as to costs. I direct that a single order for encl 1 and encl 5 be taken out.

A Order accordingly.

*Plaintiff's application allowed with costs of RM5,000 subject to 4% allocator and defendant's application dismissed with no order as to costs.*

B Reported by Dzulqarnain Ab Fatar

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